

have any such order, statute, rule, regulation, executive order, stay, decree, judgment or injunction vacated, lifted or stayed.

(d) *HSR Act.* Any waiting period applicable to the Merger under the HSR Act shall have expired or earlier termination thereof shall have been granted.

(e) *NYSE Listing.* The Purchaser Common Stock issuable in the Merger shall have been approved for listing on the NYSE upon notice of issuance.

(f) *Consent of State Regulators.* All consents of the Maryland Administration, the D.C. Superintendent, the Delaware Commission and any other appropriate state regulatory bodies that are required to consummate the transactions contemplated hereby shall have been obtained pursuant to orders which by their respective terms do not impose any Materially Burdensome Condition, and such orders shall be in full force and effect.

(g) *Approval of the Blue Cross Blue Shield Association.* Any required approval of the BCBSA shall have been obtained.

(h) *Approval by Tax-Exempt Entities.* The Merger shall have been approved by the Tax-Exempt Entities in their capacity as stockholders of CareFirst.

[(i) *Receipt of Private Letter Ruling.* CareFirst shall have received the Private Letter Ruling, which shall be favorable in all material respects.]

(j) *No Litigation.* There shall not be pending any suit, litigation or other similar proceeding relating to the Conversion or to the other transactions contemplated by this Agreement and as to which it is likely that there will be a material liability to the Purchaser Companies or the CareFirst Companies, each taken as a whole, (a "Material Case"); [provided, however, that the term "Material Case" shall not include any pending appeal of any regulatory approval or order approving the Conversion which appeal relates solely to whether the Conversion and other transactions contemplated by this Agreement should have been approved and does not seek damages or seek to alter the terms of such transactions]; provided further, however, that in the event CareFirst or Purchaser notifies the other that it considers a matter to be a Material Case, CareFirst and Purchaser agree that either may refer the matter to an independent arbitrator mutually acceptable to the parties (the "Independent Arbitrator") for a determination of whether the matter is a Material Case. The Independent Arbitrator shall hold a hearing (which shall be held pursuant to such rules and procedures as the parties may agree upon or shall be established by the Independent Arbitrator) and render a decision, which shall be final and binding upon the parties, within ten days following either party's request. Each party shall be entitled to submit a written brief or statement of position to the Independent Arbitrator (with a copy being simultaneously provided to the other party) prior to the hearing. The costs and expenses of the Independent Arbitrator shall be borne equally by Purchaser and CareFirst.

Section 7.2. Conditions to Obligations of CareFirst.

The obligation of CareFirst to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions, any one or more of which may be waived in writing by CareFirst:

(a) *Obligations Performed.* Purchaser and CFAC shall have performed and complied with in all material respects their obligations, agreements and covenants under this Agreement which are required to be performed or complied with by them at or prior to the Effective Time.

(b) *Representations and Warranties True at Closing Date.* As of the Effective Time, the representations and warranties contained in Article V shall be true and correct in all respects as if made on and as of the Closing Date (except in each case for (i) such changes that are caused by Purchaser's compliance with the terms of this Agreement, and (ii) representations and warranties that address matters only as of a date or with respect to the period of time specified therein); provided, however, that with respect to the representations and warranties other than those already qualified by Purchaser Material Adverse Effect, such representations and warranties shall be deemed true and correct unless the failure of such representations and warranties to be true and correct, in the aggregate, would result in a Purchaser Material Adverse Effect.

(c) *Certificate Delivered.* Purchaser and CFAC shall have delivered to CareFirst a certificate executed on their behalf by their respective Presidents or other authorized executive officer in its corporate capacity to the effect that the conditions set forth in subsections 7.2(a) and 7.2(b) have been satisfied.

(d) *Articles of Merger.* CFAC shall have executed and delivered the Articles of Merger in accordance with Section 2.2 hereof.

(e) *Appointment of CareFirst Director.* Purchaser shall have taken all action necessary to appoint to the Board of Directors of Purchaser the person selected pursuant to Section 6.13.

(f) *Effective Resale Registration Statement.* The Resale Registration Statement shall have been declared effective by the SEC and no stop order suspending the effectiveness of the Resale Registration Statement shall have been issued and no proceeding for that purpose shall have been initiated or threatened by the SEC.

(g) *No Material Adverse Effect.* There shall have not occurred an event that has a material adverse effect on the ability of the Purchaser to consummate the transactions contemplated hereby and otherwise to perform its obligations contemplated hereby (including scheduled payments of interest and principal on the Subordinated Notes). Further, the Purchaser Common Stock shall not have an average closing price of less than \$[] per share for any 20 consecutive trading days at any time prior to the Closing.

Section 7.3. Conditions to Obligations of Purchaser and CFAC.

The obligation of Purchaser and CFAC to effect the Merger shall be subject to the fulfillment at or prior to the Effective Time of the following additional conditions, any one or more of which may be waived in writing by Purchaser:

(a) *Obligations Performed.* CareFirst shall have performed and complied with in all material respects its obligations, agreements and covenants under this Agreement which are required to be performed or complied with by it at or prior to the Effective Time.

(b) *Representations and Warranties True at Closing Date.* As of the Effective Time, the representations and warranties contained in Article IV shall be true and correct in all respects as if made on and as of the Closing Date (except in each case for (i) such changes that are caused by CareFirst's compliance with the terms of this Agreement, and (ii) representations and warranties that address matters only as of a date or with respect to the period of time specified therein); provided, however, that with respect to the representations and warranties other than those already qualified by CareFirst Material Adverse Effect, such representations and warranties shall be deemed to be true and correct unless the failure of such representations and warranties to be true and correct, in the aggregate, would result in a CareFirst Material Adverse Effect; and provided further, that no representation or warranty contained in Section 4.11 shall be violated by reason of the expiration of any CareFirst Material Contract in accordance with its terms.

(c) *Certificate Delivered.* CareFirst shall have delivered to Purchaser a certificate executed on its behalf by its President or another authorized executive officer in its corporate capacity to the effect that the conditions set forth in subsections 7.3(a) and 7.3(b) have been satisfied.

(d) *Articles of Merger.* CareFirst shall have executed and delivered the Articles of Merger in accordance with Section 2.2 hereof.

(e) *No Material Adverse Effect.* There shall not have occurred an event that has a CareFirst Material Adverse Effect.

(f) *Agreement by Tax-Exempt Entities.* Each of the Tax-Exempt Entities shall have: (i) voted the shares of CareFirst Common Stock to be received by such Tax-Exempt Entity in favor of the Agreement and the Merger, (ii) filed any notification with the DOJ and the FTC as required by the HSR Act and (iii) if required pursuant to Rule 145 under the Securities Act, executed and delivered a written agreement substantially in the form of Appendix G.

ARTICLE VIII

Termination Prior To Closing

Section 8.1. Termination of Agreement.

This Agreement may be terminated and the Merger contemplated hereby may be abandoned at any time prior to the Effective Time, whether before or after approval by the stockholders of Purchaser:

- (a) By the written agreement of CareFirst and Purchaser;
- (b) By either of CareFirst or Purchaser in writing, if the Merger or Conversion shall not have been consummated on or before the three year anniversary of this Agreement (or such later date as may be agreed to by CareFirst and Purchaser); provided, however, that neither CareFirst nor Purchaser may terminate this Agreement under this Section if the failure has been caused by such party's material breach or default of its obligations under this Agreement;
- (c) By CareFirst in writing, if Purchaser or CFAC shall have (i) materially breached any of their respective covenants contained herein or (ii) breached any of their respective representations or warranties contained herein which (in the case of clauses (i) and (ii)), (A) in the aggregate, has resulted in a Purchaser Material Adverse Effect, and (B) is not capable of being cured within 60 days after notice of breach;
- (d) By Purchaser in writing, if CareFirst shall have (i) materially breached any of its covenants contained herein or (ii) breached any of its representations or warranties contained herein which (in the case of clauses (i) and (ii)), (A) in the aggregate, has resulted in a CareFirst Material Adverse Effect, and (B) is not capable of being cured within 60 days after notice of breach;
- (e) By either of CareFirst or Purchaser in writing, if any order, statute, rule, regulation, executive order, stay, decree, judgment or injunction shall have been enacted, entered, promulgated or enforced by any court or governmental authority which prohibits or prevents the consummation of the transactions contemplated hereby, provided that Purchaser, CFAC and CareFirst shall have used their respective Best Efforts to have any such order, statute, rule, regulation, executive order, stay, decree, judgment or injunction vacated, lifted or stayed and the same shall not have been vacated, lifted or stayed within 30 days after entry, by any such court or governmental or regulatory agency;
- [(f) By CareFirst in writing, if the condition set forth in Section 7.1(b) is required but not satisfied within 180 days after the Plan of Conversion is filed with the Maryland Administration, the D.C. Superintendent and the Delaware Commission;]
- (g) By CareFirst in writing, if the Board of Directors of CareFirst authorizes CareFirst to execute a binding written agreement with respect to a transaction that constitutes a Superior Proposal; provided, however, that prior to any termination pursuant to this Section

8.1(g), (i) the Board of Directors of CareFirst, after consultation with legal counsel, shall determine in good faith that contemplation of such Superior Proposal and termination of this Agreement is required for such Board of Directors to comply with its duties under applicable law, (ii) CareFirst notifies Purchaser in writing that it intends to enter into such an agreement and provides Purchaser with the proposed definitive documentation for such Superior Proposal and (iii) Purchaser does not, within seven days after the receipt of such written notice and documentation, provide a written offer that the Board of Directors of CareFirst determines in good faith, after application of the analysis set forth in Section 6.14, to be at least as favorable as the Superior Proposal;

(h) By either of CareFirst or Purchaser in writing, if the Maryland Administration, the D.C. Superintendent or the Delaware Commissioner disapproves the Merger after a Hearing; or

(i) By either of CareFirst or Purchaser in writing, if the FTC or the DOJ notifies any party in writing of an intent to file a suit, action or proceeding to prohibit or restrain the consummation of the transaction contemplated by this Agreement.

Section 8.2. Termination of Obligations; Liquidated Damages.

(a) A termination of this Agreement pursuant to this Article VIII shall terminate all obligations of the parties hereunder without further liability, except for the obligations under Section 9.6 hereof or as otherwise provided in this Section. In the event this Agreement is terminated (1) by CareFirst pursuant to Sections 8.1(c) [or (f)], then Purchaser shall, upon CareFirst's written request, reimburse CareFirst within 15 days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby up to an aggregate amount equal to \$_____, (2) by Purchaser pursuant to Section 8.1(d), then CareFirst shall, upon Purchaser's written request, reimburse Purchaser within 15 days after demand for all its reasonable expenses (documented in reasonable detail) incurred in connection with this Agreement and the transactions contemplated hereby up to an aggregate amount equal to \$_____, (3) by CareFirst pursuant to Section 8.1(g), then CareFirst shall be obligated to pay Purchaser, within 15 days after such termination, a termination fee of \$37.5 million, or (4) by Purchaser pursuant to Section 8.1(d) and within 12 months after such termination CareFirst enters into a definitive agreement with respect to, or consummates, another Merger Proposal, then CareFirst shall be obligated to pay Purchaser, within 15 days after entering such definitive agreement, a termination fee of \$37.5 million.

(b) The parties agree that the liquidated damages and reimbursement of expenses set forth in Section 8.2(a) shall be the total damages and sole remedy of the parties upon the termination of this Agreement; provided, however, that termination pursuant to subparagraphs (c) or (d) of Section 8.1 hereof shall not relieve a party that willfully or intentionally defaults or breaches from any liability to the other party hereto.

ARTICLE IX

Miscellaneous

Section 9.1. Entire Agreement.

This Agreement (including the Appendices and the Disclosure Schedules) constitutes the sole understanding of the parties with respect to the subject matter hereof; provided, however, that this provision is not intended to abrogate any other written agreement between the parties executed with or after this Agreement, or abrogate the effect of the Confidentiality Agreement.

Section 9.2. Amendment.

No amendment, modification or alteration of the terms or provisions of this Agreement shall be binding unless the same shall be in writing and duly executed by the parties hereto.

Section 9.3. Parties Bound by Agreement; Successors and Assigns.

The terms, conditions and obligations of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto prior to the Effective Time without the prior written consent of the other parties hereto; provided that Purchaser and CFAC each shall be permitted to assign this Agreement to a direct or indirect wholly-owned subsidiary of Purchaser so long as Purchaser remains fully liable for any failure of such assignee to perform its obligations hereunder. Except for the parties hereto and any person or entity covered by an indemnification provision hereunder, this Agreement is not intended to confer upon any other person any rights or remedies hereunder.

Section 9.4. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

Section 9.5. Modification and Waiver.

Any of the terms or conditions of this Agreement may be waived in writing at any time by the party which is entitled to the benefits thereof. No waiver of any of the provisions of this Agreement shall be deemed to be or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 9.6. Expenses.

Except as otherwise expressly provided herein, if the Merger is not consummated, all costs and expenses incurred in connection with this Agreement and the transactions

contemplated hereby shall be paid by the party incurring such costs or expenses, subject to the rights of such party contemplated under Article VIII with respect to a willful breach, violation or default by the other party hereto.

Section 9.7. Survival of Representations and Warranties.

The respective representations and warranties of CareFirst, Purchaser and CFAC contained herein or in any certificates or other documents delivered prior to or at the Closing by such parties pursuant to the terms of this Agreement shall terminate upon the consummation of the Merger and be of no further force and effect.

Section 9.8. Notices.

Any notice, request, instruction or other document to be given hereunder by any party hereto to any other party hereto shall be in writing and delivered personally or sent by registered or certified mail (including by overnight courier or express mail service), postage or fees prepaid, or sent by facsimile with original sent by overnight courier,

If to Purchaser:

Pacific
[address]

Attn:

*with a copy (which shall
not constitute notice) to:*

If to CareFirst:

CAREFIRST, INC.
10455 Mill Run Circle
Owings Mills, Maryland 21117
Facsimile: (410) 998-5732
Attn: William L. Jews
President and Chief
Executive Officer

*with a copy (which shall
not constitute notice) to:*

CAREFIRST, INC.
10455 Mill Run Circle
Owings Mills, Maryland 21117
Facsimile: (410) 998-7810
Attn: John A. Picciotto, Esq.
Executive Vice President